IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2977 OF 2004

Mr. Khan Mohd. Asif Bashir ..Petitioner.

Vs.

University of Mumbai & Ors. ..

Respondents.

....

Mr. Vijay Pandey i/b Mr. Ashutosh Kanwar for the petitioner.

Mr. R. Rodrigues for respondent No.1.

Mr. A.G. Kothari for respondent No.2.

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CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J.

21st December, 2004.

P.C. :

1. The Petitioner has impugned the decision of the University of Mumbai following an inquiry held by the Unfair Means Inquiry Committee to cancel the performance of the Petitioner at the First Year Engineering (Semester I) Examination and to debar him from appearing at any university or college examinations till the end of the first half of the year 2006. The allegation is that the Petitioner had adopted unfair means at the examination held in the subject of Applied Mathematics- I in the first semester of the Engineering

Degree Course. The allegation against the Petitioner in the show cause notice was to the following effect :

> "It is alleged against you that during your examination in the subject of Applied Mathematics, you managed to get written one of your answer book, which was in black ink, from a person known to you at your behest and had submitted the same to the concerned Jr. Supervisor on conclusion of the examination in the said subject along with the other answer book, which was written by you in blue ink. It is further alleged against you that the answers to the questions written by you in answer book in blue ink were found to be incorrect whereas the answers to the questions got written by you from a person known to you in black ink in another answer book were found to be correct so as to get you undue benefit of passing in the said subject. You have thereby practised unfair means of the nature of IMPERSONATION when you appeared at the F.E. (Sem.I) examination held in the second half of the year 2003."

2. The allegation has been found to have been substantiated and on that basis the Petitioner has been penalized by an order dated 18th October, 2004 of the Controller of Examinations which is impugned in these proceedings.

3. The university received a complaint from the examiner that the handwriting and ink of the two answer sheets (main and supplement) of the Petitioner in the Applied Mathematics – I paper were different. The Petitioner was informed on 4th March, 2004 that his result at the examination was held in reserve under

Ordinance 5050. By a letter dated 4th March, 2004 the Petitioner was called upon to appear before the Unfair Means Inquiry Committee on 9th March, 2004. The record which has been produced before the Court shows that on 9th March, 2004 the Petitioner was shown his answer books in the subject of Applied Mathematics and his attention was drawn to the irregularities observed therein. The Petitioner's statement was recorded before the committee. By a letter dated 17th March, 2004 the Petitioner was once again called upon to appear before the committee on 25th March, 2004. The Petitioner was again shown the answer books, one of which was written in black ink and the other in blue ink. The statement of the Petitioner was recorded. On 23rd April, 2004 a show cause notice was issued to the Petitioner alleging that it had been observed from his answer books in the subject of Applied Mathematics – I at the First Semester Examination held in the second half of the year 2003 that the handwriting on the main answer book was entirely different from the handwriting which appeared in the supplementary answer book. Further, a black ink pen had been used for writing the main answer book, whereas a blue writing pen had been used for writing the supplementary answer book. The correct answers were found to have been

written in the main answer book, whereas wrong answers were found in the supplementary answer book. In the circumstances, it was alleged that the Petitioner had managed to get one of the answer books written from a person known to him and therefore, the Petitioner had engaged in impersonation.

4. In his reply dated 28th April, 2004 the Petitioner claimed that the handwriting in one part of the paper was different from that in the main answer book since he had appended "rough answer sheets" together with the main answer book. The explanation of the Petitioner was as follows :

> "In this regard my handwriting had to change and it is well established principle that handwriting of individual change with respect to Stress, Moods, etc. and various other Psychological influences effect the handwriting of an individual."

5. The Petitioner appeared before the committee on 28th April, 2004. At its meeting on 28th April, 2004, the committee decided that the matter be referred to a handwriting expert. The handwriting expert submitted his report on 29th July, 2004 and by a letter dated 19th August, 2004 the Petitioner was called upon to

appear before the committee on 3rd September, 2004. On 3rd September, 2004 the Petitioner submitted a statement clarifying that he had been shown the report of the handwriting expert and recorded that according to the report, the writing in the answer books was different. A show cause notice was issued to the Petitioner on 6th September, 2004 and the Petitioner was called upon to appear before the committee on 14th September, 2004. The Petitioner did not appear before the committee and he was again called upon to appear before the committee on 8th October, 2004. The Petitioner remained absent on 8th October, 2004. The impugned communication was issued to the Petitioner by the Controller of Examinations on 18th October, 2004, informing him that the charges levelled against him of having adopted unfair means stood proved and that a penalty as noted earlier was imposed upon him.

6. In order to satisfy ourselves of the legitimacy of the action which has been adopted against the Petitioner, we had called the learned counsel appearing on behalf of the University to produce before us the the answer books of the Petitioner. Ex facie, it is obvious upon a bare perusal of the answer books that the main

answer book and the supplementary answer book are written in different sets of handwriting and in different inks. The finding of the university of impersonation is clearly borne from the material on the record. The Petitioner has been heard by the Unfair Means Inquiry Committee. The answer books were shown to the Petitioner. Indeed the explanation of the Petitioner in his letter dated 28th April, 2004 is that his handwriting " had to change" and that "it is well established principle that handwriting of individual change with respect to Stress, Moods etc. and various other Psychological influences effect the handwriting of an individual". The falsity of the explanation is apparent from its very tenor and face. The handwriting on the main answer book is ex facie not the same as that in the supplementary answer book. The explanation of the Petitioner that the difference is due to stress or moods is only a feeble attempt to put forth an unbelievable explanation. Ex facie, the handwriting in the main answer book and in the supplementary answer book is of two different individuals. The explanation offered by the Petitioner was unbelievable and has rightly been rejected by the university. Having perused the record, we do not find that there is any infirmity in the action of the university. The Petitioner would obviously stand to gain by the unlawful action to which

recourse was taken in the course of the examination. There has been due and substantial compliance with the principles of natural justice. A show cause notice was issued to the Petitioner explaining the nature of the charges. The Petitioner understood the charges and submitted his reply. The Petitioner inspected the answer books and the report of the handwriting expert. Indeed the university appears to have acted out of abundant caution in referring the matter to a handwriting expert since the charge is ex facie borne out by even a bare perusal of the answer books. The inquiry took place over several months and the Petitioner had an adequate opportunity to defend himself. Even assuming that the intimation in regard to one of the hearings was received late that would not in the facts of this case vitiate the inquiry. The Petitioner had several opportunities which he duly availed of in submitting his defence. No prejudice is shown to have been caused. The penalty is not disproportionate. The charge is a serious charge. We find no merit in the Petition which is accordingly dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD,

J.